

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JUANA VIADA, ET AL.,

:

Plaintiffs,

: **REPORT and RECOMMENDATION**

-against-

:

04 Civ. 2744 (VM)(KNF)

OSAKA HEALTH SPA, INC., ET AL.,

:

Defendants.

:

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KEVIN NATHANIEL FOX
UNITED STATES MAGISTRATE JUDGE

TO THE HONORABLE VICTOR MARRERO, UNITED STATES DISTRICT JUDGE

In this action, brought pursuant to the Fair Labor Standards Act and analogous provisions of state law, the parties seek a protective order to facilitate the resolution of their disputes under the terms of a settlement agreement (“Settlement Agreement”). The parties note that “the settlement is conditioned upon placing the Settlement Agreement under seal and keeping the negotiations and the terms of the settlement confidential,” and assert that “it will not be possible to conclude the agreement without this degree of confidentiality.” The parties to the Settlement Agreement include the litigants in the instant action and the parties to a related action which is currently pending in state court. Counsel to the parties to the related state court action have been involved in the negotiations of the settlement and drafting of the Settlement Agreement, and agree to the request for a protective order.

“[A] federal judge has the power to prevent access to settlement negotiations when necessary to encourage the amicable resolution of disputes . . . and . . . a federal court’s power to

seal documents takes precedence over [Freedom of Information Act] rules that would otherwise allow those documents to be disclosed.” City of Hartford v. Chase, 942 F.2d 130, 135 (2d Cir. 1991)(citations omitted); see also United States v. Glens Falls Newspapers, Inc., 160 F.3d 853, 856 (2d Cir. 1998)(“We have recognized that a federal court may aid in crafting a settlement by enjoining the interference of others.”). Furthermore, materials related to settlement discussions and documents “do not carry a presumption of public access.” S.E.C. v. TheStreet.Com, 273 F.3d 222, 233 (2d Cir. 2001)(quoting Glens Falls Newspapers, 160 F.3d at 857).

In this case, the Court is persuaded that a settlement of the parties’ dispute is not possible without the inclusion in the Settlement Agreement of the proposed protective order. Moreover, all of the interested parties in this case, including those involved in the related state court action, have concurred in the request that the negotiations and terms of the settlement be kept confidential. Accordingly, the Court recommends that the parties’ application for a protective order to facilitate settlement be granted.

FILING OF OBJECTIONS TO THIS REPORT AND RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties have ten (10) days from service of the Report to file written objections. See also Fed. R. Civ. P. 6. Such objections, and any responses to objections, shall be filed with the Clerk of Court, with courtesy copies delivered to the chambers of the Honorable Victor Marrero, United States District Judge, 40 Centre Street, Room 414, New York, New York 10007, and to the chambers of the undersigned, 40 Centre Street, Room 540, New York, New York 10007. Any requests for an extension of time for filing objections must be directed to Judge Marrero.

FAILURE TO FILE OBJECTIONS WITHIN TEN (10) DAYS WILL RESULT IN A WAIVER

OF OBJECTIONS AND WILL PRECLUDE APPELLATE REVIEW. See Thomas v. Arn, 474 U.S. 140 (1985); IUE AFL-CIO Pension Fund v. Herrmann, 9 F.3d 1049, 1054 (2d Cir. 1993); Frank v. Johnson, 968 F.2d 298, 300 (2d Cir. 1992); Wesolek v. Candair Ltd., 838 F.2d 55, 57-59 (2d Cir. 1998); McCarthy v. Manson, 714 F.2d 234, 237-38 (2d Cir. 1983).

Dated: New York, New York
June 27, 2006

Respectfully submitted,

Sent copies via facsimile
and mail to:

Hacyoung Yoon, Esq.
Dr. Nam-Hi Lee
Daniel P. Smulewicz, Esq.



KEVIN NATHANIEL FOX
UNITED STATES MAGISTRATE JUDGE